IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 91 of 1989

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MADHEVAJI DAYARAM PUROHIT - Appellant(s)
Versus
STATE OF GUJARAT - Defendant(s)

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Appearance :
MR DD VYAS for Appellant(s) : 1,
MR AY KOGJE AGP for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 07/11/2006

ORAL JUDGMENT

1. Shri D.D. Vyas, learned counsel for the appellant and Shri A.Y. Kogje, learned Assistant Government Pleader for

respondent – State.

2. The appeal has been admitted for hearing the parties on 5/12/1990, the order reads “Admit. Expedited.” No substantial question of law has been framed for the purpose of admission of the appeal.

3. It would not be proper on my part to rehear the appellant's counsel on the question of admission. I heard the learned counsel for the appellant on question Nos.2 and 4 as projected by them in para 6 of the appeal memo. The said questions read as under;-

(i) Whether on the facts and circumstances of the present case would the Appellate Court right in arriving at the conclusion that the appellant is not a Government Servant?

(ii) Whether in the facts and circumstances of the present case would the learned Appellate Judge right in holding that the impugned action of the respondent in not transferring the appellant to the post of Secondary Teacher in Secondary Government School is legal, valid and constitutional?

4. Short facts necessary for disposal of the matter are that

somewhere in the year 1962, the appellant – plaintiff was appointed as a teacher with the School Board. He continued to discharge his services, but on coming into force of Gujarat Panchayat Act, 1961 (“Act” for short) w.e.f. 1/1/1961, under sec.155 of the Act his services came to be transferred to the District Panchayat. The plaintiff joined the services as a teacher with the District Pnchayat (the Panchayat is not a party before this Court, nor a party in the suit), his services came to be transferred in 1964 to the District Panchayat.

5. The trial court decreed the suit. Being aggrieved by the same, the State took up the matter in appeal. The appeal was allowed and therefore, the plaintiff is before this Court.

6. Shri D.D. Vyas, learned counsel for the appellant referring to sections 202, 206 and 210 of Gujarat Panchayat Act, 1961 and to a judgment of the Hon'ble Supreme Court in the case of Mathuradas Mohanlal Kedia and ors Vs. S.D.Munshaw and others, reported in A.I.R. 1981 S.C. 53 submitted that each and every servant of the Panchayat is a government servant and under the circumstances, the first appellate court was unjustified in dismissing the suit. Referring to proviso appended to clause (e) of sub-

section (1) of section-155 of the Act, it was submitted that the terms and conditions of service of any employee who has been transferred from one place to Panchayat shall not be less favourable than those applicable to him while in service of existing school board. His short submission is that the plaintiff is a government servant and in any case the State Government or the Panchayat could not deny lawful right of the plaintiff.

7. The plaintiff who was a Non-Graduate, obtained Bachelor of Arts (B.A.) Degree in 1974 and he also obtained Bachelor of Education (B.Ed.) degree in 1975 and Master of Arts (M.A.) Degree in 1978. The plaintiff prayed to the Panchayat that his services be transferred from Primary School to Secondary School in accordance with government circular. As no relief was granted to him, he filed the present suit. In the suit he sought for a declaration that the action of the State Government in not promoting the respondent – plaintiff while in service as a Secondary School Teacher was illegal, unconstitutional and void. He also prayed for a declaration that he be declared to be State servant on the post of Secondary School Teacher w.e.f. 15/7/1976 and also prayed for certain directions. The Government

contested the suit on all possible grounds and submitted that the plaintiff was not a government servant, but in fact was a Panchayat servant.

8. The case of Mathuradas Mohandlal Kedia (supra) was altogether a different. In the said matter provisions contained in section 206 and provisions in sub-sections-2, 2(a), 3 and 4 of section-203 provided that panchayat service constituted under sec.203 would only be centralised service and recruitment of candidate tobe made under sec.210 by Gujarat Panchayat Service Selection Board would be to that centralised service. According to the Supreme Court, Sections 203, 206 and 210 were tobe read together to find that whether the person has been selected by Gujarat Panchayat Service Selection Board and whether he forms a part of Centralised Services. According to the Supreme Court, the division of the Panchayat Service into district cadre, taluka cadre and local cadre does not affect the integrity of the Panchayat Service. It continues to be a single service notwithstanding such division. The Supreme Court finally observed that the Panchayat service being a Statewide service, it had to be held that it was a common centralised service.

9. The present is a case where undisputedly the plaintiff was not selected under sec.210 and under such circumstances the plaintiff could not become part of the centralised service.

10. Once it is held that the plaintiff is not part of the centralised service, then he cannot claim the status of a government servant. The appellate court was justified in holding that the original plaintiff is not a government servant.

11. So far as the application of proviso appended to clause (e) of sub-section (1) of section-155 of the Act is concerned, this Court must immediately observe that the said occasion would not arise in the present case because the plaintiff has not joined the Panchayat as a party defendant, nor he is claiming any relief against his master i.e. the Panchayat.

12. The question No.1 has to be answered against the interest of the appellant, while question No.2 is also tobe answered against the interest of the appellant. The relief sought by the appellant that the order passed by the respondent in not transferring the appellant to a secondary school as a teacher is not valid, cannot be granted in his favour, as relationship of master and

servant does not exist between appellant and State and as the plaintiff is not a government servant, the question of respondent committing illegality would not arise. In view of the answer to the questions on which the appeal has been admitted, the appeal deserves to fail, it is accordingly dismissed. No costs.

13. Let a decree be framed accordingly.

(R.S. GARG,J.)

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